IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.150 OF 2006

Shri Nivas D. Sawant & Ors. ...Petitioners

Versus

Kalyan-Dombivili Municipal
Corporation, Kalyan ...Respondents

Miss Gauri Godse for the petitioners.
Shri A.S.Rao for the respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 24th JANUARY, 2006.

P.C.

1. Heard Miss.Godse appearing for the petitioners and Shri Rao appearing for the respondent - Corporation. With their assistance, I have perused the very lengthy orders, which have been delivered by the trial Court as well as the lower Appellate Court, during the course of deciding an application (Exh.5) for interim injunction.

2. The Suit which is instituted by the petitioners being Regular Civil Suit No.20 of 2004 is admittedly pending. In the Suit, the prayer of the petitioners-plaintiffs is that the action of the respondent-Corporation in issuing a Notice and demolishing the structures, is illegal, malafide, void and without jurisdiction. A mandatory injunction is claimed against the Corporation to the effect that the petitioners-Orig.plaintiffs be allowed to reconstruct and restore the suit properties in the same condition as they stood before the demolition.

3. The interim injunction which was prayed in the Suit was to restrain the Corporation from carrying-out further demolition; and maintaining the status-quo at site.

4. After perusing the materials produced, the trial Court as well as the lower Appellate Court have concluded that prima-facie the documents (Exh.3/P1 to P56), produced for the perusal of the Courts below, do not indicate that all the petitioners had established their right, title and interest in the property or in any event their plea that they are claiming through the Erstwhile Municipal Council. Consistent with the material placed on record and also in the light of the fact that the property is required for widening of road and laying down the electric cables to enable Tata Power Company to supply the electricity, the Courts below have refused interlocutory reliefs as prayed. The same have been refused also on the ground that necessary parties have not been impleaded to the Suit.

5. No interference is required with such findings of fact and recorded at a prima-facie stage, in my jurisdiction under Article 227 of

the Constitution of India. I am not inclined to interfere with the orders as passed, because the construction of road which is in public interest cannot be held-up. However, to preserve the status-quo and the subject matter of the Suit, it is directed that the respondent - Municipal Corporation after construction and completion of the road widening work, shall not allot any portions thereon till the Regular Civil Suit No.20 of 2004 is decided. The same to be decided as expeditiously as possible and in any event within a period of six months from the date of receipt of the copy of this order. This order does not prevent the Power Company to use the Road and/or portion thereof for laying down its cables or installing any equipment for supplying electricity to areas under its operation.

6. Needless to observe that in case the Corporation wishes to allot some spaces which are vacant, after the road is constructed, for the

purposes of parking,then, it is at liberty to make suitable application to trial Court for modification of this order and such application to be decided after hearing the petitioners as well as the Corporation and without being influenced by the order passed by this Court. Further, needless to state that all observations in the impugned order, are prima-facie and cannot influence the Court at trial and shall not affect the right of the petitioners to apply for mandatory orders, which request must be considered in the light of the materials placed at the trial. All contentions of both sides in that behalf are expressly kept open.

(S.C.DHARMADHIKARI, J)